

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 648**

Introduced by Howard, 9; Hansen, 26; Morfeld, 46; Nordquist, 7; Pansing  
Brooks, 28.

Read first time January 21, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to adoption; to amend sections 43-101,
- 2 43-104.08, 43-104.13, 43-104.15, 43-104.18, 43-104.19, and 43-111,
- 3 Reissue Revised Statutes of Nebraska; to provide for adoption by two
- 4 adult persons jointly; to harmonize provisions; and to repeal the
- 5 original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-101, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 43-101 (1) Except as otherwise provided in the Nebraska Indian Child  
4 Welfare Act, any minor child may be adopted by any adult person or two  
5 persons jointly, regardless of their marital status, subject to sections  
6 43-101 to 43-115. Any parent of a minor child may consent to the adoption  
7 of the minor child by the parent's spouse or by another adult who will  
8 share parental responsibility for the child with such parent, without the  
9 parent having to relinquish his or her legal rights to the child. No  
10 ~~persons and any adult child may be adopted by the spouse of such child's~~  
11 ~~parent in the cases and subject to sections 43-101 to 43-115, except that~~  
12 ~~no~~ person having a husband or wife may adopt a minor child unless the  
13 husband or wife ~~joins in the petition therefor. If the husband or wife so~~  
14 ~~joins in the petition therefor, in which case the adoption shall be by~~  
15 ~~them jointly, except that an adult husband or wife may adopt a child of~~  
16 ~~the other spouse whether born in or out of wedlock.~~

17 (2) Any adult child may be adopted by any person or two persons  
18 jointly, regardless of their martial status, persons subject to sections  
19 43-101 to 43-115, except that no person having a husband or wife may  
20 adopt an adult child unless the husband or wife joins in the petition  
21 therefor. If the husband or wife so joins the petition therefor, the  
22 adoption shall be by them jointly. The adoption of an adult child by  
23 another adult or adults who are not the stepparent of the adult child may  
24 be permitted if the adult child has had a parent-child relationship with  
25 the prospective parent or parents for a period of at least six months  
26 next preceding the adult child's age of majority and (a) the adult child  
27 has no living parents, (b) the adult child's parent or parents had been  
28 deprived of parental rights to such child by the order of any court of  
29 competent jurisdiction, (c) the parent or parents, if living, have  
30 relinquished the adult child for adoption by a written instrument, (d)  
31 the parent or parents had abandoned the child for at least six months

1 next preceding the adult child's age of majority, or (e) the parent or  
2 parents are incapable of consenting. The substitute consent provisions of  
3 section 43-105 do not apply to adoptions under this subsection.

4 Sec. 2. Section 43-104.08, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 43-104.08 Whenever a child is claimed to be born out of wedlock and  
7 the biological mother contacts an adoption agency or attorney to  
8 relinquish her rights to the child, or the biological mother joins in a  
9 petition for adoption to be filed by another adult person ~~her husband~~,  
10 the agency or attorney contacted shall attempt to establish the identity  
11 of the biological father and further attempt to inform the biological  
12 father of his right to execute a relinquishment and consent to adoption,  
13 or a denial of paternity and waiver of rights, in the form mandated by  
14 section 43-106, pursuant to sections 43-104.08 to 43-104.25.

15 Sec. 3. Section 43-104.13, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 43-104.13 The notice sent by the agency or attorney pursuant to  
18 section 43-104.12 shall be served sufficiently in advance of the birth of  
19 the child, whenever possible, to allow compliance with subdivision (1) of  
20 section 43-104.02 and shall state:

21 (1) The biological mother's name, the fact that she is pregnant or  
22 has given birth to the child, and the expected or actual date of  
23 delivery;

24 (2) That the child has been relinquished by the biological mother,  
25 that she intends to execute a relinquishment and consent to adoption, or  
26 that the biological mother has joined or plans to join in a petition for  
27 adoption to be filed by another adult person ~~her husband~~;

28 (3) That the person being notified has been identified as a possible  
29 biological father of the child;

30 (4) That the possible biological father may have certain rights with  
31 respect to such child if he is in fact the biological father;

1 (5) That the possible biological father has the right to (a) deny  
2 paternity, (b) waive any parental rights he may have, (c) relinquish and  
3 consent to adoption of the child, (d) file a Notice of Objection to  
4 Adoption and Intent to Obtain Custody pursuant to section 43-104.02, or  
5 (e) object to the adoption in a proceeding before any Nebraska court  
6 which has, prior to his receipt of this notice, adjudicated him to be the  
7 biological father of the child;

8 (6) That to deny paternity, to waive his parental rights, or to  
9 relinquish and consent to the adoption, the biological father must  
10 contact the undersigned agency or attorney representing the biological  
11 mother, and that if he wishes to object to the adoption and seek custody  
12 of the child he should seek legal counsel from his own attorney  
13 immediately; and

14 (7) That if he is the biological father and if the child is not  
15 relinquished for adoption, he has a duty to contribute to the support and  
16 education of the child and to the pregnancy-related expenses of the  
17 mother and a right to seek a court order for custody, parenting time,  
18 visitation, or other access with the child.

19 The agency or attorney representing the biological mother may  
20 enclose with the notice a document which is an admission or denial of  
21 paternity and a waiver of rights by the biological father, which the  
22 biological father may choose to complete, in the form mandated by section  
23 43-106, and return to the agency or attorney.

24 Sec. 4. Section 43-104.15, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 43-104.15 The notification procedure set forth in sections 43-104.12  
27 to 43-104.14 shall, whenever possible, be completed prior to a child  
28 being placed in an adoptive home. If the information provided in the  
29 biological mother's affidavit prepared pursuant to section 43-104.09  
30 presents clear evidence that providing notice to a biological father or  
31 possible biological father as contemplated in sections 43-104.12 to

1 43-104.14 would be likely to threaten the safety of the biological mother  
2 or the child or that conception was the result of sexual assault or  
3 incest, notice is not required to be given. If the biological father or  
4 possible biological fathers are not given actual or constructive notice  
5 prior to the time of placement, the agency or attorney shall give the  
6 adoptive parent or parents a statement of legal risk indicating the legal  
7 status of the biological father's parental rights as of the time of  
8 placement, and the adoptive parent or parents shall sign a statement of  
9 legal risk acknowledging their acceptance of the placement,  
10 notwithstanding the legal risk.

11 Sec. 5. Section 43-104.18, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 43-104.18 If a petition to finalize an adoption is filed and fails  
14 to establish substantial compliance with sections 43-104.08 to 43-104.16,  
15 the court shall receive evidence by affidavit of the facts and  
16 circumstances of the biological mother's relationship with the biological  
17 father or possible biological fathers at the time of conception of the  
18 child and at the time of the biological mother's relinquishment and  
19 consent to adoption of the child, including any evidence that providing  
20 notice to a biological father would be likely to threaten the safety of  
21 the biological mother or the child or that the conception was the result  
22 of sexual assault or incest. If, under the facts and circumstances  
23 presented, the court finds that the agency or attorney representing the  
24 biological mother did not exercise due diligence in complying with  
25 sections 43-104.08 to 43-104.16, or if the court finds that there is no  
26 credible evidence that providing notice to a biological father would be  
27 likely to threaten the safety of the biological mother or the child or  
28 that the conception was the result of sexual assault or incest, the court  
29 shall order the attorney or agency to exercise due diligence in complying  
30 with sections 43-104.08 to 43-104.16. If the attorney or agency fails to  
31 exercise due diligence in complying with such sections or at any time

1 upon the petition or application of any interested party, the court may  
2 appoint a guardian ad litem to represent the interests of the biological  
3 father. The guardian ad litem shall be chosen from a qualified pool of  
4 local attorneys. The guardian ad litem shall receive reasonable  
5 compensation for the representation, the amount to be determined at the  
6 discretion of the court.

7 Sec. 6. Section 43-104.19, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 43-104.19 The guardian ad litem for the biological father shall:

10 (1) Identify the biological father whenever possible;

11 (2) Notify the biological father or possible biological fathers of  
12 the proposed relinquishment and consent to adoption of the child and  
13 inform the biological father or possible biological fathers of their  
14 parental rights and duties with regard to the child;

15 (3) Notify the court if all reasonable attempts to both identify and  
16 notify the biological father or possible biological fathers are  
17 unsuccessful; and

18 (4) Determine, by deposition, by affidavit, by interview, or through  
19 testimony at a hearing, the following: whether the mother was married at  
20 the time of conception of the child or at any time thereafter, whether  
21 the mother was cohabitating with a man at the time of conception or birth  
22 of the child, whether the mother has received support payments or  
23 promises of support with respect to the child or in connection with her  
24 pregnancy, whether conception was the result of sexual assault or incest,  
25 and whether any man has formally or informally acknowledged or declared  
26 his possible paternity of the child.

27 Sec. 7. Section 43-111, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 43-111 Except as provided in sections 43-101 and section ~~43-106.01~~  
30 and the Nebraska Indian Child Welfare Act, after a decree of adoption has  
31 been entered, the natural parents of the adopted child shall be relieved

1 of all parental duties toward and all responsibilities for such child and  
2 have no rights over such adopted child or to his or her property by  
3 descent and distribution.

4 Sec. 8. Original sections 43-101, 43-104.08, 43-104.13, 43-104.15,  
5 43-104.18, 43-104.19, and 43-111, Reissue Revised Statutes of Nebraska,  
6 are repealed.